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MEMORANDUM

TO: PCAD and OMF Supervisors and Managers

FROM: Barbara Coler, Chief
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DATE: May 13, 2005

SUBJECT: PERMITTING AND CORRECTIVE ACTION DIVISION (PCAD)/ OFFICE
OF MILITARY FACILITIES DIVISION (OMF) COORDINATION FOR
MILITARY PROPERTY TRANSFERS

The Hazardous Waste Management Program/Site Mitigation and Brownfields Reuse Program (HWMP/SMBRP) Interface Workgroup has developed a series of guidance documents to assist project managers in ensuring property transfers at hazardous waste facilities are conducted in compliance with the Health and Safety Code and Title 22 of the California Code of Regulations. This guidance is applicable to property transfers at closing and realigning military facilities. Aspects may be pertinent to SMBRP private sites and Water Board lead sites, but there will be later discussions on the overall applicability and process needed, if appropriate, at these facilities. Use of this guidance will:

- Ensure adequate public participation and disclosure.
- Notify property recipient of potential liability associated with ownership of current or former Hazardous Waste Facility property.
- Ensure compliance with the Health and Safety Code and Title 22 for documentation of the change in the facility boundary when all or a portion of a Hazardous Waste Facility is transferred to a new owner.

Waste Facilities, the Interface Workgroup has outlined a project review process. This process is outlined in the "Corrective Action Decision Matrix for Property Transfers at Hazardous Waste Facilities," and consists of:

- A file review to identify status of the facility permit and any Hazardous Waste Management Units (HWMUs), i.e., Units subject to Closure;
- An inventory and cross-reference of all HWMUs, Solid Waste Management Units (SWMUs)/Areas of Concern (AOCs), and SMBRP Sites;
- Certification of Closure/Cleanup of HWMUs, AOCs/Sites by lead program; and
- Use of the Corrective Action Decision Matrix to guide procedural requirements.

The project review process guidance documents are available on the U: drive of DTSC's LAN (U:\SM\OMF\HWMP SMBRP Interface Workgroup\Guidance), as well as the list of Military Facilities subject to RCRA, and the *Federal Register* notice of U.S. EPA's *Final Guidance for Completion of Corrective Action Activities at RCRA Facilities*.

- 1) RCRA CERCLA Inventory Form (Excel file)
- 2) Example Facility Diagram
- 3) Decision Matrix for Property Transfers, Latest Version
- 4) RCRA Closure by SMBRP– OMF - Process Flowchart (Only for use at Military Facilities where agreements have been made to conduct RCRA Closures under the CERCLA process)

It is DTSC's intent to provide a seamless integration of RCRA and CERCLA site cleanups to ensure that, to the extent feasible, additional process needs are extremely limited and that property transfers should not be delayed when the Department of Defense (DoD) works cooperatively and closely with DTSC early in the process. DTSC has worked with the Military Departments in developing this process. The first fully integrated transfer completed in this fashion was with the Department of the Navy (DON) for the MCAS El Toro Sale Parcels transfer. At El Toro, both the RCRA and CERCLA programs of Region IX U.S. EPA worked closely with DTSC and DON on the integration process. The Navy has accepted this process and is proposing it be used for the next El Toro transfer. The process was briefed at a national Superfund Managers Conference in August 2004. The process has been completed for transfers at McClellan AFB and Fort Ord either simultaneously or after the fact. We are currently working with developers at the former Tustin MCAS to complete the process for previously transferred property.

We would like to thank the members of the workgroup for their efforts. The workgroup included:

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We would like to extend a special thanks to Nancy Long for her hard work, dedication and overall commitment to the Workgroup.

Please feel free to contact the following workgroup representatives with any questions.

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The procedures established in this document are intended solely as guidance for DTSC personnel. This is not intended and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with DTSC. DTSC reserves the right to act at variance with these procedures at any time, consistent with statutory and regulatory requirements.

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HWMP/SMBRP Interface Workgroup (Past/Present)

Interim Final - Decision Matrix
for
Property Transfers at
Closing and Realigning Military
Hazardous Waste Management Facilities

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Military base closures and realignments in California are resulting in a significant number of property transfers from federal ownership to private or local public ownership. There is significant pressure to transfer this property as quickly as possible to meet Department of Defense transfer goals and to allow for redevelopment as quickly as possible. Most of these facilities are subject to California's Hazardous Waste Control Law (HWCL) because of their current or historic hazardous waste management practices. In order to ensure enforceability of remaining response actions or operations and maintenance and to prevent the unexpected transfer of liability to the new owner, it is imperative that all HWCL and CERCLA responsibilities and liabilities are clearly documented prior to transfer of the property. This guidance has been prepared to assist project managers reviewing property transfer documentation to ensure that all HWCL and CERCLA requirements are complied with, all enforceable documents, land use covenants, and financial responsibility requirements are in place prior to the transfer. Similarly, for clean parcels, i.e., those parcels where all HWCL sites are closed and corrective action and CERCLA responses have been completed it is important to recognize publicly that no response liability remains for these parcels. For clean parcels, this guidance provides the minimum requirements for making a Corrective Action Complete Determination (CACD) with a facility boundary modification and outlines the process agreed to by the U.S. Navy for making this determination simultaneously with and using DoD's Finding of Suitability to Transfer (FOST) documentation.

This guidance directs Office of Military Facilities Division and Permitting and Corrective Action Division project managers to openly communicate and coordinate activities at first indication of a property transfer to identify the status of any HWCL applicability and to inventory and list the status of all sites subject to either HWCL closure and/or corrective action or CERCLA responses and to ensure all enforceable agreements are in place to document responsibility for any remaining response action requirements.

BACKGROUND

All Hazardous Waste Management Facilities which have operated (handled hazardous waste) in a manner that was subject to a Hazardous Waste Permit (i.e., facilities which have, or should have submitted a Part A Permit Application and/or operated under Interim Status under California's HWCL or the Resource, Conservation and Recovery Act, RCRA) are subject to the Hazardous Waste Control Law (HWCL). In addition to procedural requirements for closure and post-closure for Hazardous Waste Management Units, the HWCL makes all contiguous property under the control of the owner or operator (a.k.a. fenceline-to-fenceline) subject to Corrective Action. This Corrective Action requirement applies to the property regardless of the status of the permit or other regulatory authorization. For Hazardous Waste Management Facilities with active permits or who are actively managing waste under interim status, transfer of property **must** be conducted in accordance with the HWCL and the California Code of Regulations, Title 22. Transfer of property at a Hazardous Waste Management facility where there is no active permit (i.e., the permit is expired or the facility is in interim status and the facility is not actively managing hazardous waste), should be conducted consistent with the HWCL and Title 22. In a February 9, 2004 letter to the Honorable Hansford T. Johnson, Assistant Secretary of the Navy, responding to concerns voiced by Mr. Johnson, the former Secretary of the California Environmental Protection Agency, Terry Tamminen, stated that making a Corrective Action Complete Determination (CACD) potentially makes the parcel more attractive for reuse, and it provides new transferees and owners confidence they would not have remaining HWCL corrective action liabilities. The letter also stated that the Military may elect not to go through the CACD (but RCRA/HWCL corrective action liability would extend to the transferees) and that DTSC would work with such transferees at their request to process the CACD if applicable. Once the potential Corrective Action liability is identified for a facility, a Corrective Action Complete Determination and facility boundary modification must be made to remove that liability. If no Determination/boundary modification is made, HWCL liability for corrective action extends to the new owner when title is transferred.

This decision matrix outlines the procedural guidelines to ensure compliance/consistency with the HWCL and Title 22 during property transfers.

Following these procedures ensures that:

- 1) HWCL liability for closure or corrective action is removed for clean parcels (where closure and corrective actions are complete)
- 2) The party responsible for HWCL liability for those parcels where closure or corrective action is not complete is clearly identified and enforcement instruments are in place
- 3) The Hazardous Waste Facility boundaries are modified accordingly
- 4) The public is informed of the actions being taken by both the facility and the State.

These procedures were designed to be generally consistent with the United States Environmental Protection Agency's (EPA) "Final Guidance on Completion of Corrective

Action Activities at RCRA Facilities,” published in the Federal Register, Tuesday, February 25, 2003 (68FR8757), and with the California Health and Safety Code. Procedures for ensuring appropriate closure of hazardous waste management units are found in HWCL and Title 22. If closures were adequately completed, the CACD/boundary modification process will include the completed closures.

FRAMEWORK

During the preparation of this guidance, the following baseline decisions were made to ensure consistent implementation.

- 1) Cleanups conducted at Military Facilities with State regulatory oversight, whether by OMF or a Regional Water Quality Control Board are considered to have met the substantive requirements of HWCL Corrective Action and will not be reevaluated.
- 2) A HWCL “Corrective Action Complete with Controls” determination can be made once a site satisfies the CERCLA “Remedy In Place and Operating Properly and Successfully” requirements
- 3) For Non-permitted facilities, the corrective action complete determination and boundary change are not administrative “permit” decisions, (because there is no permit and facilities are not required to comply with Title 22, Ch 20, Article 4 Modifications), therefore:
 - a. The determination and boundary change is not appealable
 - b. No public meeting is required
 - c. Public Participation will determine need for a separate Fact Sheet mailout

USE OF THIS DOCUMENT

This guidance has been prepared to facilitate the transfer of property from closing and realigning military facilities. For non-Federal Facilities, in general, a similar approach could be applied.

To determine the requirements (permit modification or equivalent, enforcement documents, etc.) for a particular property transfer at a Hazardous Waste Management Facility, refer to the table below. Before using the table, you must know the environmental status of the parcel(s) being transferred (i.e., clean, Institutional Controls and/or Engineering Controls only, Waste-in-place, etc.), the status of the hazardous waste management facility permit, and whether the transfer is the entire facility or a portion of the facility. In order to obtain this information, a RCRA/CERCLA Facility Inventory should be jointly completed by Permitting and Corrective Action Division and Office of Military Facilities Division staff using the RCRA/CERCLA Facility Inventory Form available as an Excel Spreadsheet on the DTSC Local Area Network at U:\SM\OMF\HWMP SMBRP Interface Workgroup\Guidance

The Decision Matrix is organized into four different types of property transfer based on the presence and status of HWCL/RCRA Hazardous Waste Management Units (HWMUs, units subject to permit and closure requirements) and HWCL/RCRA Solid Waste Management Units (SWMUs, units subject to corrective action only). The four different types of property transfer are representative of typical transfers at closing military bases and apply only to the parcel being transferred. They include the carve-out of “clean” parcels for quick transfer; transfers of parcels which have institutional controls or operations and maintenance in place (long-term liability remains); transfers where the parcel contains a hazardous waste management unit that hasn’t been closed or some long-term post-closure requirements remain; and finally, early transfers, those parcels where the final remedy is not in place.

Transfer Type – the four Types of Transfers discussed include:

- 1) Clean Transfer – defined as: the Facility or Parcel being transferred contains one of the following:
 - a. No releases, or
 - b. All SWMU(s), Site(s), and AOC(s) have been cleaned up to residential standards and have no further action Decision Documents, and
 - c. All HWMU(s) have been clean closed.
- 2) Institutional Controls (ICs) or Operations and Maintenance (O&M) Remain – defined as: the Facility or Parcel being transferred has Institutional Control requirements and/or has engineering controls with ongoing Operations and Maintenance. For parcels with engineering controls with on going Operations and Maintenance, the remedy must have a determination that it is “Operating properly and successfully.”
- 3) RCRA/HWCL Hazardous Waste Management Unit (HWMU) – defined as: the Facility or Parcel being transferred has a Hazardous Waste Management Unit that is not closed and/or is subject to a Post-Closure Permit.
- 4) RCRA/HWCL Solid Waste Management Unit (SWMU) – defined as: the Facility or Parcel being transferred has a Solid Waste Management Unit (SWMU) for which corrective action is not complete, also known as an Early Transfer.

Special Note – For Transfer Types 1 and 2, the Department reviews the project to make the Corrective Action Complete Determination and to modify the Facility Boundary. The public involvement for these types is greater because the Department is concluding that cleanup is done and no further cleanup work is necessary (except potentially O&M). For Transfer Types 3 and 4, the closure or corrective action is clearly NOT complete. For these transfers, the public involvement is either limited or unnecessary, because the process simply documents who has the closure/cleanup responsibility upon transfer.

Permit Status – In this Decision Matrix, hazardous waste management facilities are separated by the status of their permit, and are placed into one of two status categories; permitted and non-permitted. This differentiation is necessary because the Health and Safety Code makes a clear distinction between the two. The H&SC requires facilities

with active permits and facilities operating under interim status to comply with the permit modifications of Title 22 CCR, while specifically exempting interim status facilities which are not receiving waste and have notified DTSC of their intent to close from the same permit modification regulations (Chapter 6.8 H&SC 25200.5(k)).

'Permitted' facilities include facilities with active Treatment, Storage or Disposal Facility (TSDF) or Transfer facility permits or interim status facilities which are actively managing waste.

'Non-permitted' facilities include those that have lost interim status, have expired permits, have illegal units, or interim status facilities which are no longer managing waste and have notified DTSC of their intent to close.

Permitted and operating interim status facilities are required to comply with the permit modification regulations of Article 4 of Chapter 20, Title 22 CCR. The specific requirements for a particular permit modification are dependent on the type of modification. Facility initiated modifications are organized by Class, and range from a Class 1 which consists of a simple notification to DTSC of a change, to a Class 3 which requires two separate public comment periods and public hearings. Article 4 contains a list of permit modifications and assigns each a particular Class, however, Corrective Action is not listed. Change of ownership is listed as a Class 1*. The U.S. EPA guidance recommends a Class 3 permit modification for a determination that Corrective Action is complete, however, in rare cases, a lower class of modification may be appropriate depending on the specifics of the parcel being transferred and the level of public concern. This is noted in the table and in the examples.

Non-permitted facilities, although they may still be subject to interim status regulations, are exempt from the facility permit modification regulations. To ensure adequate public involvement in the process, DTSC developed the 'Equivalent' procedures (not a permit modification) which are based on the 'agency initiated' permit modification process. The majority of closing military bases, because of the time between being identified as a closing base and actual property transfers, are 'non-permitted' facilities. Due to the abundance of such transfers they have been the focus of this coordination effort. In addition to the RCRA administrative requirements for property transfer, CERCLA specifies notification requirements for transfers of federally-owned property. The Department of Defense has developed a document called the Finding of Suitability to Transfer (FOST) to satisfy the CERCLA notification requirements. DTSC has developed this Corrective Action Complete Determination and Boundary Modification process so that it can utilize the FOST to provide supporting documentation and can be public noticed simultaneously with DoD's FOST.

NPL Sites – Owner/Operators of some National Priority Listed (NPL) sites have made the case that the CERCLA permit exemption waives the need for RCRA administrative requirements. DTSC maintains that the CERCLA permit exemption only exempts the administrative requirements for permits necessary for the implementation of the remedy. These waivers in no way affect the status of a hazardous waste facility permit or interim

status nor do they affect the requirements for RCRA regulated HWM facilities to comply with all state HWM laws and regulations including permit modifications. Separately, a "Corrective Action Complete" Determination and hazardous waste facility boundary change in no way affects the facility's National Priorities List site designation.

Previous Transfers – If transfers have already occurred at a Facility where Corrective Action Complete Determinations were not made, it is recommended that:

- 1) If future transfers take place, the process can be used to make Boundary Modifications and Corrective Action Complete Determinations as appropriate for all previous transfers to date, or
- 2) If no future transfers are planned, DTSC may initiate a public notification process for previously transferred parcels.

SUMMARY

When a hazardous waste facility proposes to transfer property, a file review should be conducted using the RCRA CERCLA Facility Inventory Form to determine the status of the facility permit; all RCRA regulated units, hazardous waste management units (HWMUs), solid waste management units (SWMUs) and areas of concern (AOCs). Using the results of the inventory, the appropriate Transfer Type and Permit Status can be selected in the Decision Matrix below. The specific Requirements for Transfer are provided in the Table.

At most military facilities, all or portions of the Corrective Action requirement are being conducted under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) process with the oversight of DTSC's Site Mitigation and Brownfield's Reuse Program Office of Military Facilities, rather than being conducted under the HWCL. Because of procedural and authority differences between HWCL/RCRA and CERCLA, facilities which have completed CERCLA cleanups may not have satisfied all Corrective Action and closure requirements. HWCL and CERCLA are procedurally different in that the HWCL includes an administrative review process including a 45 day public comment period at the end of closure or corrective action to document the activity completion. This procedure is not included in the CERCLA process. Authority differences include state hazardous wastes and underground tank releases which are excluded from CERCLA authority and releases occurring after 1984 for which military bases require separate funding and oversight, usually under a Compliance program. In order to make the determination that all releases subject to HWCL Corrective Action have been addressed, documentation for all release responses must be presented.

Where possible, Corrective Action decisions should be integrated in to CERCLA Records of Decision or State Remedial Action Plans (RAP). At many bases, a final Basewide ROD/RAP is prepared documenting all previous decisions made in interim ROD/RAP and removal actions. Particularly for "No Action" decisions, language can be

added to the ROD/RAP to document the satisfactory completion of the Corrective Action. At sites where a response action is required, language can be added to the Response Action Completion Reports to document the completion of Corrective Action and these documents can be “noticed” for a 45-day public comment period. The earlier in the process the Corrective Action requirement is identified and integrated into the CERCLA process, the less effort will be required at the time of property transfer. For transfers where the ROD/RAP and Completion Report have already been completed, it is best to use the Military’s Finding of Suitability to Transfer (FOST) to provide the supporting documentation for a Corrective Action Complete Determination. However, if the military has completed the FOST and later requests the CACD, the FOST can be recirculated with the supporting documentation for the CACD with an additional 45-day public comment period.

Integrating the HWCL Corrective Action requirements into the CERCLA process minimizes the impact and need for additional administrative processes which could delay property transfers and property redevelopment.

Use the Table below as a process checklist to help ensure all documentation is complete prior to property transfer.

Transfer Type	Criteria	Facility Permit Status	Requirements for Transfer	Specific Actions
1) Clean Transfer “Corrective Action Complete Without Controls”	Facility or Parcel contains: No Releases; NFA Decision Document for all SWMUs, AOCs and Sites; and all Hazardous Waste Management Units are Residential Clean Closed	<u>Permitted:</u> Permitted Facility, or Operating Interim Status Facility	All or Portion of Facility: <ul style="list-style-type: none"> - Facility initiates Class 3 Permit Modification to request a Corrective Action Complete without Controls Determination for the Facility. Boundary adjustment (survey) is required if a portion of the Facility is transferred. Operating Interim Status facilities must follow a process equivalent to a Class 3 Modification. - Conduct CEQA Review - FOST, Military Facilities are required to document all releases and responses to those releases in a Finding of Suitability to Transfer. The FOST should provide useful documentation for Hazardous Waste Facility permit status, closure and corrective action. 	<p>Facility and DTSC must follow requirements of 22 CCR 66270.42.* Page 12.</p> <p>CEQA Review.</p> <p>*<u>NOTE:</u> Equivalent process may be used. See NOTE at end of this Table, Page 12</p> <p>Permitted Example: See Example 1 (Page 19)</p> <p>Active Interim Status See Example 2 (Page 19)</p>
		<u>Nonpermitted</u> Facility: Inactive Interim Status, Expired Permit, Illegal Unit, or Loss of Interim Status	All or Portion of Facility: <ul style="list-style-type: none"> - DTSC makes a Corrective Action Complete without Controls Determination for the Facility. Boundary adjustment (survey) is required if a portion of the Facility is transferred. - Conduct CEQA Review <p>In addition, if Closing Military Base:</p> <ul style="list-style-type: none"> - FOST: The military service will prepare a Finding of Suitability to Transfer the property. See the <u>Preferred Process for Closing Military Bases</u>, page 13 	<p>Follow the procedures for the “<u>Equivalent Process</u>.” (Page 16)</p> <p>CEQA Review</p> <p>Non Permitted/Clean See Example 3 (Page 19)</p>

Transfer Type	Criteria	Facility Permit Status	Requirements for Transfer	Specific Actions
<p>2) Transfer Parcel has final remedy in place which requires Institutional Controls or Operation and Maintenance*.</p> <p>“Corrective Action Complete With Controls”</p> <p>*NOTE: For parcels with Operations and Maintenance requirements, this Type includes units subject to Post-Closure Care ONLY. For units subject to Post-Closure Permit, see Type 3, below.</p>	<p>a) Institutional Controls Only: Residual Contamination on or under parcel, requiring land use restrictions</p> <p>b) Final Remedy in Place includes engineering controls and Long-Term Operations and Maintenance. Remedy must a determination of “operating properly and successfully”</p>	<p><u>Permitted:</u> Permitted Facility or Operating Interim Status Facility</p>	<p>All or Portion of Facility:</p> <ul style="list-style-type: none"> - Facility initiates Class 3 Permit Modification to request a Corrective Action Complete with Controls Determination for the Facility. Boundary adjustment (survey) is required if a portion of the Facility is transferred. Operating Interim Status facilities must follow a process equivalent to a Class 3 Modification. - Land Use Covenant with Access Rights. - For parcels requiring active O&M: an O&M Agreement or Order. - Financial Assurance. (Waived for federal, state, or local government entity) - Conduct CEQA Review - FOST should document the status of all responses. - Deed must contain access rights and restrictions. 	<p>Facility and DTSC must follow requirements of <u>22 CCR 66270.42</u>. (Page 12)</p> <p>CEQA Review</p> <p><u>NOTE:</u> Equivalent process may be used. See Note, Page 12.</p>
		<p><u>Nonpermitted:</u> Inactive Interim Status, Expired Permit, Illegal Unit, or Loss of Interim Status</p>	<p>All or Portion of Facility:</p> <ul style="list-style-type: none"> - DTSC makes a Corrective Action Complete with Controls Determination for the Facility. Boundary adjustment (survey) is required if a portion of the Facility is transferred. - Land Use Covenant with Access Rights - For parcels requiring active O&M: an O&M Agreement or Order. - Financial Assurance. (Waived for federal, state, or local government entity) - Conduct CEQA Review - FOST See the <u>Preferred Process for Closing Military Bases</u>, page 13 - Deed must contain access rights and restrictions. 	<p>Follow the <u>Equivalent Procedures</u> Page 16.</p> <p>CEQA Review</p> <p>Non Permitted/O&M See Example 4 (Page 19)</p>

Transfer Type	Criteria	Facility Permit Status	Requirements for Transfer	Specific Actions
3) Transfer Parcel Contains RCRA Hazardous Waste Management Unit where closure is not complete, and/or a HWMU subject to Post-Closure Permit.	Liability for RCRA Closure/Post-Closure extends to both the original owner and the new owner.	<u>Permitted:</u> Permitted Facility or Operating Interim Status Facility	All or Portion of Facility <ul style="list-style-type: none"> - Facility initiates a Class 1* Permit Modification to change ownership and/or Facility boundary. New owner may assume permit, or DTSC may enter into Enforceable Agreement, or Order with Owner/Operator for Closure. - Any required Post-Closure Care must be conducted under a separate enforceable agreement or Post-Closure Permit. - Financial Assurance for Closure Plan followed by Financial Assurance for Post-Closure Care if necessary. - Land Use Covenant with Access Rights - FOST or FOSET will be prepared by the Military - Governor's approval of Covenant Deferral if an early transfer - Deed must contain access rights and restrictions. - Financial Assurances if early transfer and transferee is assuming remediation obligations. 	Facility and DTSC must follow requirements of <u>22 CCR 66270.42</u> for a Class 1* permit modification. (Page 12) Mailout and Public Notice required for Class 1* permit modification. Example: Elk Hills (Insert Example)
	The new owner and the RP may agree and contract for the RP to manage the Closure/Post-Closure, however, the new owner still assumes liability.	<u>Nonpermitted:</u> Inactive Interim Status, Expired Permit, Illegal Unit, or Loss of Interim Status	All or Portion of Facility <ul style="list-style-type: none"> - DTSC may enter into Consent Agreement, or Order with Owner/Operator for closure. Then, if HWMU is a "regulated unit," DTSC will issue a Post-Closure Permit - Financial Assurance for Closure Plan - Land Use Covenant with Access Rights - FOST or FOSET will be prepared by the Military - Governor's approval of Covenant Deferral if an early transfer - Deed must contain access rights and restrictions. - Financial Assurances if early transfer and transferee is assuming Remediation/Corrective Action obligations. 	No specific DTSC initiated public participation requirements

Transfer Type	Criteria	Facility Permit Status	Requirements for Transfer	Specific Actions
<p>4) Transfer Parcel contains SWMU(s) with Corrective Action not Complete.</p> <p>All HWM Units on parcel and/or Facility have been clean Closed</p>	<p>Since Corrective Action Not Complete, RCRA Liability extends to RP and New Owner. New Owner may have agreement for RP to conduct cleanup, but new owner still assumes liability.</p>	<p><u>Permitted:</u> Permitted Facility or Operating Interim Status Facility</p>	<p>All or Portion of Facility</p> <ul style="list-style-type: none"> - Facility initiates a Class 1* Permit Modification to change ownership and/or Facility boundary. New owner may assume permit, or DTSC may enter into Consent Agreement, or Order with Owner/Operator for Corrective Action. - Land Use Covenant with Access Rights - FOSET - Governor's approval of Covenant Deferral - Deed must contain access rights and restrictions. - Financial Assurances if transferee is assuming Remediation/Corrective Action obligations. 	<p>Facility and DTSC must follow requirements of <u>22 CCR 66270.42</u>, for a Class 1* permit modification. (Page 12)</p> <p>CEQA Review</p> <p>Mailout and Public Notice required for Class 1* permit mod.</p>
		<p><u>Nonpermitted:</u> Inactive Interim Status, Expired Permit, Illegal Unit, or Loss of Interim Status</p>	<p>All or Portion of Facility</p> <ul style="list-style-type: none"> - DTSC may enter into Consent Agreement, or Order with Owner/Operator for completion of corrective action. - Land Use Covenant with Access Rights - FOSET - Governor's approval of Covenant Deferral - Deed must contain access rights and restrictions. - Financial Assurances if transferee is assuming remediation obligations. 	<p>No specific DTSC initiated public participation requirements.</p> <p>CEQA Review</p> <p>Example 5: NCTS Stockton</p>

NOTE: A Class 3 Permit modification is suggested for completion determinations at permitted facilities. However, Class 3 procedures may not be appropriate or necessary in all circumstances. For example, where the Department has made extensive efforts throughout the corrective action or site mitigation process to involve the public and has received little or no interest, and the environmental problems at the facility were limited, more tailored public participation may be appropriate. At a minimum, RCRA decisions must be made following the procedures for an Agency Initiated Modification.

PERMITTED FACILITIES AND OPERATING INTERIM STATUS FACILITIES

Permitted Facilities and facilities operating (managing waste) under interim status are mandated by the Health and Safety Code (25200.5(k)(1) and/or Title 22 CCR to comply with Article 4 of Part 66270, Permit Modifications. Article 4, does not specify a class of permit modification for termination of corrective action. Article 4 provides that for unspecified modifications the Department may determine the appropriate requirements for the modification. The U.S. EPA Guidance for "Completion of Corrective Action Activities at RCRA Facilities" suggests that a Class 3 modification is appropriate in most cases. Based on the specifics of the transfer, DTSC may accept public participation activities previously completed as applying toward the Class 3 modification requirements.

Class 1* Permit Modification

The Class 1 Modification requirements are specified in: 22 CCR 66270.42(a)

Changes in ownership or operational control of a Facility may be made as a Class I modification with prior written approval of the Department (see 66270.40(b)). (Class 1* requires prior Departmental approval) This section is intended to apply to the sale or transfer of an operational facility to a new owner for continued operation. It is not intended for the transfer of a all or a portion of a hazardous waste facility to a new owner for use other than a hazardous waste facility.

Class 1* modification to change ownership requires the following:.

- (A) The permittee shall notify the Department concerning the modification by certified mail or other means that establish proof of delivery at least 30 calendar days before the change is put into effect. This notice shall specify the changes being made to permit conditions or supporting documents referenced by the permit and shall explain why they are necessary. Along with the notice, the permittee shall provide the applicable information required by sections 66270.10, 66270.13 through 66270.23, 66270.62, and 66270.63. With written authorization from the Department, the change may be put into effect earlier than 30 calendar days after the Department is notified concerning the modification.

- (B) The permittee shall send a notice of the modification to all persons on the facility mailing list, maintained by the Department in accordance with section 66271.9(c)(1)(D), and the appropriate units of State and local government, as specified in section 66271.9(c)(1)(E). The notification shall include the information specified in subsections 66271.9(d)(1)(A) through 66271.9(d)(1)(D). The information shall also include a description of the proposed changes at the facility, and the name and telephone number of a Department contact person. This notification shall be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior Department approval, the notification shall be made within seven days after the permittee notifies the Department and shall also be published in a major local newspaper of general circulation.
- (C) Any person may request the Department to review, and the Department may for cause reject, any Class 1 modification. The Department shall inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee shall comply with the original permit conditions.
- (D) Causes for rejection of a Class 1 permit modification by the Department include:
- a. the requested modification does not qualify as a Class 1 permit modification;
 - b. the modification request does not contain sufficient information for the Department to determine the appropriate permit modification classification or to determine the actions necessary to comply with the California Environmental Quality Act (CEQA) with respect to the requested modification, or the modification is otherwise incomplete;
 - c. the requested modification does not comply with the appropriate requirements of chapter 14 of this division or other applicable requirements; or
 - d. the conditions of the modification fail to protect human health and the environment.
- (E) Class 1 permit modifications identified in Appendix I of this chapter by an asterisk and Class 1 modifications not exempt from the requirements of CEQA under Title 14, CCR section 15061 may be made only with the prior written approval of the Department

- (F) For a Class 1 permit modification, the permittee may elect to follow the procedures in section 66270.42(b) for Class 2 modifications instead of the Class 1 procedures. The permittee shall inform the Department of this decision in the notice required in section 66270.42(b)(1)

Class 3 modifications.

The Class 3 Modification requirements are specified in: 22 CCR 66270.42(c)

- (1) For Class 3 modifications the permittee shall submit a modification request to the Department that:

- (A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;
- (B) identifies that the modification is a Class 3 modification;
- (C) explains why the modification is needed; and
- (D) provides the applicable information required by sections 66270.10, 66270.13 through 66270.23, 66270.62, 66270.63 , and 66270.66.

- (2) The permittee shall send a notice of the modification request to all persons on the facility mailing list maintained by the Department and to the appropriate units of State and local government as specified section 66271.9(c)(1)(E) and shall publish this notice in a major local newspaper of general circulation. This notice shall be mailed and published within seven days before or after the date of submission of the modification request, and the permittee shall provide to the Department evidence of the mailing and publication. The notice shall include:

- (A) announcement of a 60-day comment period, and a name and address of a Department contact to whom comments shall be sent;
- (B) announcement of the date, time, and place for a public meeting on the modification request, in accordance with section 66270.42(c)(4);
- (C) name and telephone number of the permittee's contact person;
- (D) name and telephone number of a Department contact person;
- (E) location where copies of the modification request and any supporting documents can be viewed and copied; and
- (F) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the Department contact person."

- (3) The permittee shall place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

- (4) The permittee shall hold a public meeting no earlier than 15 days after the publication of the notice required in subsection (c)(2) of this section and no later than 15 days before the close of the 60-day comment period. The meeting shall be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period shall begin on the date the permittee publishes the notice in the local newspaper. Comments shall be submitted to the Department contact identified in the notice.

(6) After the conclusion of the 60-day comment period, the Department shall grant or deny the permit modification request as follows:

- (A) Prepare a Fact Sheet and Public Notice.
- (B) DTSC shall consider and respond to all significant written comments received during the 60-day comment period.
- (C) For the purposes of complying with the requirements of CEQA, the Class 3 permit modification shall not be considered complete until the close of the 60-day comment period and receipt by the Department from the permittee of the information necessary to address the public comments submitted during the 60-day comment period and other information required by this section.
- (D) Send the Fact Sheet and Public Notice to the facility, the facility mailing list and local officials.
- (E) Publish the notice in a local newspaper of general circulation and broadcast over local radio stations.
- (F) The notice shall:
 - (i) allow at least 45-days for public comment. period, and a name and address of a Department contact to whom comments shall be sent;
 - (ii) name and address of the office processing the permit action;
 - (iii) name and address of the permittee;
 - (iv) brief description of the business conducted at the facility;
 - (v) name, address and telephone number of a contact person;
 - (vi) a brief description of the comment procedures;
 - (vi) the location of the administrative record;
 - (vii) public notices for hearing shall contain specific details of the hearing.
- (G) Public Notice the final decision.

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EQUIVALENT PROCESS FOR NON-PERMITTED FACILITIES

“CORRECTIVE ACTION COMPLETE WITH OR WITHOUT CONTROLS” DETERMINATION AND “FACILITY BOUNDARY MODIFICATION” FOR NON- PERMITTED FACILITIES

Closing, inactive, non-permitted facilities are exempted from the Permit Modification regulations in Title 22 CCR, by H&SC 25200.5(k)(2). However, in order to transfer all or a portion of a non-permitted facility without transferring RCRA liability to the new owner, DTSC must make a determination that Corrective Action is complete and modify the facility boundary. This determination indicates that either no corrective action was necessary or where corrective action was necessary, the remedy has successfully returned the site to unrestricted land use (Without Controls). The same process is used for a Parcel that has not been cleaned up to unrestricted land use but has necessary institutional controls such as a Land Use Covenant in place and/or the final remedy is in place and operating properly, a long-term Operations and Maintenance Agreement is in place, and financial responsibility requirements are met (With Controls). The process for making this determination must provide procedural protections for DTSC. The following procedural requirements must be met when making such a determination.

(From Chapter 21, 66271.1 et. seq.)

1. Public Notice
2. Fact Sheet
3. 45-day comment period
4. Public hearing, if one is requested, or if DTSC determines there is significant interest (30-day notice)
5. Response to Comments
6. Notice of final modification decision

There is no “legal requirement” to conduct this Equivalent Process prior to a property transfer for a non-permitted facility. The Corrective Action Complete Determination and Facility Boundary Modification remove the RCRA Corrective Action liability from the property, leaving the new owner with unencumbered property. Transfer of the property without completing the process transfers the RCRA Corrective Action liability to the new owner of the property. The new owner would be accepting the financial responsibility should additional corrective action be necessary.

PREFERRED PROCEDURE FOR MAKING A “CORRECTIVE ACTION COMPLETE” DETERMINATION AND “BOUNDARY MODIFICATION” AT CLOSING MILITARY BASES

Most closing military bases qualify as “non-permitted” hazardous waste facilities because they are no longer managing waste and either have expired permits or only operated under interim status. Thus, the Title 22, Chapter 20, Article 4 Permit Modification regulations do not apply. Separately, CERCLA requires that for the

transfer of federally-owned property to non-federal governmental ownership, the federal government must provide notice of hazardous substance storage, disposal or release and provide covenant that all remedial actions have been taken and that any actions found necessary after the transfer will be conducted by the federal government. Because of this requirement, the Department of Defense prepares a Finding of Suitability to Transfer report for all transferring property. As required by CERCLA, this document is required to document all storage, disposal or release and all remedial actions. As such, this FOST should clearly document all hazardous waste management unit closure and all corrective action taken. The military services public notice this document for 30 days prior to property transfer. Because of the similarities of this document and the documentation needed to satisfy the "Corrective Action Complete" Determination, it is logical to conduct these two processes simultaneously. At Marine Corps Air Station (MCAS) El Toro, DTSC and the Navy worked together to conduct the following simultaneous FOST and Corrective Action Complete Determination (CACD) processes. Here's how it was done...

MCAS El Toro has an expired RCRA permit. Its permitted storage unit was closed in 1996 and the permit expired in 2003. One RCRA Interim Status unit remains to be closed, the Explosive Ordnance Disposal Range. However, this unit is not associated with the property proposed for transfer. MCAS El Toro is listed on EPA's National Priority List. This discussion in no way affects MCAS El Toro's status or boundaries as an NPL site.

DTSC has determined that for facilities with expired permits or inactive interim status, herein called non-permitted facilities, the CACD and facility boundary change are not considered "permit" decisions and are therefore not subject to administrative appeal. Non-permitted facilities are not subject to Title 22, Chapter 20, Article 4 Modification procedures, so strict adherence to the public involvement process is not required. However, DTSC believes it is good government to notify the public and to allow for meaningful public input for any decision we make. In addition to responding to and making any substantive changes received during the public comment period, as with many public agency decisions, it would be subject to civil suit under a writ of mandate. Further, the CACD and facility boundary change are not required to be completed prior to the transfer of the property. However, DTSC recommends the process be conducted to ensure RCRA corrective action liabilities and obligations are not imposed on transferees.

Separately, the Navy desires DTSC's CACD and boundary change for the Sale Parcel to maximize the value of the property. Based on this, the following process has been agreed to with the U.S. Navy at El Toro.

The Navy has agreed to a joint public review process for the CACD and Finding of Suitability to Transfer (FOST). The Navy understands that DTSC intends to use the content of the FOST as the supporting documentation for the CACD and has agreed not to public notice the FOST until DTSC has provided concurrence.

The Draft Final FOST contains all of the information necessary pursuant to the DoD FOST guidance. Also, the FOST contains the information necessary to document that all corrective action has been completed. The FOST will include a Notice of Intent or Fact Sheet provided by DTSC. The "Fact Sheet" (1) declares that the State intends to make the determination that corrective action is complete on the FOST parcels; (2) the RCRA "facility" no longer includes the FOST parcels, and (3) all property retained under U.S. Navy ownership (lease property) is still subject to corrective action or other HWCL/RCRA obligations if applicable (e.g., closure of the EOD unit). The FOST (with "Fact Sheet") and the Draft CEQA Notice of Exemption (NOE) will be placed in the information repository.

DTSC and the Navy will jointly publish a public notice announcing public comment period on the Navy FOST and DTSC's (1) Draft Corrective Action Complete Determination, (2) redefinition of the MCAS El Toro RCRA hazardous waste facility boundary, and (3) DTSC's preparation of a CEQA Draft NOE. The public notice will include both Navy and DTSC contacts for submittal of comments.

The Draft Final FOST (with DTSC's Fact Sheet) will be subject to a 45-day public comment period. No public meeting is required. At this time, there is little public interest, however, if DTSC determines that sufficient public concern warrants a meeting, a meeting will likely be scheduled coincidental with MCAS El Toro's May 2004 Restoration Advisory Board meeting. DTSC will mail the public notice along with a cover letter to the official MCAS El Toro mailing list. The CEQA NOE will be public noticed for review, but is not subject to public comment.

Note – at El Toro, DTSC agreed not to mail out the fact sheet to the facility mailing list, however, for future transfers DTSC would recommend the Fact Sheet be included in the mailout.

At the end of the 45-day public comment period, DTSC will review and respond to public comments and (it is assumed) sign the CACD letter which will be mailed to the Navy. The Navy will provide response to comments on the FOST and sign the Final FOST. A Notice will be published in the paper stating that the FOST is final, the CACD is signed, and MCAS El Toro RCRA facility boundary has been redefined.

EXAMPLES

Examples:

1. Example Transfer Type 1) – Clean Parcel at Permitted Facility:
Aerojet Rancho Cordova – Transfer of Buffer Zone Property for redevelopment. Aerojet is a permitted hazardous waste treatment and storage facility. Significant public participation activities including meetings, fact sheets and notices had been conducted by DTSC and the facility in preparation for the property transfer. The parcel being transferred never had HWM activity. DTSC gave Aerojet equivalency credit for the facility portion of Class 3 modification procedures.

2. Example Transfer Type 1) – Clean Parcel at an Operating Interim Status Facility
Operating Interim Status facilities are required by the H&SC to comply with the Permit Modification regulations as if they were permitted. However, since there is no actual permit to modify, an equivalent process is required. (No specific example...Sierra Army Depot withdrew its application)

3. Example Transfer Type 1) - Clean Parcel, portion of a Nonpermitted Facility
McClellan AFB “Six Clean Category 1 Parcels” transfer – McClellan AFB has an expired permit and has inactive Interim Status HWM Units. Since the facility is nonpermitted:

- a) Facility submitted a letter providing maps of the Facility boundary prior to and after the transfer.
- b) DTSC conducts an Agency Initiated Modification process to make a boundary adjustment and a “Corrective Action Complete Without Controls” determination.
- c) CEQA Notice of Exemption prepared.

4. Example Transfer Type 2b) – Remedy-in-Place Parcel requiring Operations and Maintenance

Mather Air Force Base Parcel G transfer. Mather AFB is a nonpermitted facility. Parcel G includes a CERCLA site with a groundwater pump and treat system. The Site is considered to have its “Remedy in Place” and requires ongoing Operations and Maintenance. System is “Operating Properly and Successfully”, and the RP (Air Force) retains responsibility for O&M under a Federal Facility Agreement. “Parcel G” is the transfer of recreational property to the Sacramento County. Since the facility is nonpermitted the transfer requires the following:

- 1) DTSC conducts a Agency Initiated Modification Process to make a facility boundary adjustment and make a “Corrective Action Complete with Controls” determination,
- 2) The facility submits two maps, one of existing facility boundary showing proposed transfer and one of new boundary after transfer;
- 3) The Deed must provide access rights for the RP to conduct O&M and to the Agencies for oversight;
- 4) Must have an enforceable agreement with the RP, in this case Mather is a Federal Facility on the NPL and has a Federal Facility Agreement. Since DoD is claiming regulators have no Post-ROD authority under CERCLA, DTSC may

require an enforceable O&M agreement with the Air Force prior to transfer of the parcel.

- 5) Since the Federal Government is the RP, Financial Assurance is waived;
- 6) DTSC must sign a Land Use Covenant with the RP and new owner. The Covenant must include access rights;
- 7) DTSC must conduct a CEQA review to determine if there is a "project."

Example 5 - Early Transfer at a Nonpermitted Facility

Naval Computer and Telecommunication Station, Stockton. NCTS Stockton is a nonpermitted facility. Site investigation is not complete. No Remedial Investigations have been completed. The Navy has vacated the property and two-thirds is already leased to the Port of Stockton. The remaining 500 acres is proposed to be transferred to the Port. Responsibility for investigation and cleanup will transfer to the Port of Stockton. Since the facility is nonpermitted the transfer requires the following:

- 1) DTSC enters in to a Consent Agreement or Order with the Owner/Operator. In this case, the Port.
- 2) DTSC enters into an FFSRA with the Navy for retained conditions.
- 3) Since Federal property is transferring, Navy prepares a Finding Of Suitability for Early Transfer
- 4) Port prepares and files a Pre-decisional Land Use Covenant
- 5) Since this is a privatized cleanup, the Navy and the Port sign a Environmental Services Cooperative Agreement for investigation and cleanup.
- 6) The Port must provide Financial Assurance (Insurance)
- 7) DTSC must conduct a CEQA review to determine if there is a "project."
- 8) Governor must approve DoD's Covenant Deferral prior to deed transfer.